



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
33 ARCH STREET, 24TH FLOOR
BOSTON, MA 02110-1424

BOSTON
REGIONAL OFFICE

August 13, 2025

By ECF (courtesy copy to chambers and counsel)

Honorable Andrew L. Carter, Jr., United States District Judge
United States District Court for the Southern District of New York
Thurgood Marshall Courthouse, 40 Foley Square
New York, NY 10007

Re: *Securities and Exchange Commission v. Zhabilov et al.*, 1:24-cv-007362

Dear Judge Carter:

Defendant Harry Zhabilov has requested “a Pre-Motion Conference in advance of Defendant’s Motion to Dismiss the Complaint....” Dkt. 115. Plaintiff objects to this request because Mr. Zhabilov already requested a pre-motion conference and this Court already set the deadline for the filing of Mr. Zhabilov’s Motion to Dismiss—August 11, the day he filed a new conference request. Dkt. 92. In other words, August 11 was the due date for his motion, not for another request for conference. Mr. Zhabilov’s letter motion should be denied and his time to move to dismiss deemed to have ended.

About nine months ago (Dec. 9, 2024), Mr. Zhabilov (through prior counsel) filed a four-page Letter Motion requesting a pre-motion conference on a motion to dismiss. Dkt. 43. Current counsel for Mr. Zhabilov appeared in March 2025. On June 27, 2025, the Court found it unnecessary to conduct a pre-motion conference, denied the letter motion, and ordered Defendants to confer about streamlining the motion briefing. Dkt. 82. The parties did so, and the Court endorsed their proposed joint status report and schedule. Dkt. 92 (July 3, 2025). Mr. Zhabilov’s counsel joined that status report and agreed to a motion briefing schedule (endorsed by the Court) setting August 11, 2025 as the due date for some Defendants’ motions, including Mr. Zhabilov’s. *Id.* Counsel even requested in the status report that Mr. Zhabilov be permitted to file a separate motion, instead of consolidating with the Apolant/Dilluvio Defendants’ motion. Thus, Monday, August 11, was the deadline for Mr. Zhabilov’s Motion, and it did not appear.

The Court conducted a conference on August 7, 2025, [Dkt. 116] and Mr. Zhabilov’s counsel did not then request any extension of the existing deadline for his Motion to Dismiss.¹ And Commission counsel had, a few weeks ago, discussed with Mr. Zhabilov’s counsel his intention to file a motion and the likelihood that counsel would make arguments other than the ones in Mr. Zhabilov’s original pre-motion letter. Dkt. 43. The Commission indicated that it

¹ Counsel did confirm this Court’s earlier ruling that Mr. Zhabilov could file a motion to dismiss separate from that filed by the Apolant and Dilluvio Defendants.

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would not object to this change in scope, even though current counsel has had five months to alert the Court that they wished to make different arguments.

One cannot get a new deadline and an extension of time to move to dismiss by simply starting the pre-motion process again. Mr. Zhabilov's request for pre-motion conference should be denied and his time to move to dismiss should be deemed to have lapsed.

Sincerely,

/s/ Marc J. Jones

Marc Jones, Senior Trial Counsel
Rua Kelly, Senior Trial Counsel
Securities and Exchange Commission

cc: All defense counsel (via ECF)
Mr. Ray and Ms. Austin (via ECF)